

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TYRONE H. MASSEY,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF  
CORRECTIONS, *et al.*,

Defendants.

20cv5665 (GBD) (DF)

**ORDER**

**DEBRA FREEMAN, United States Magistrate Judge:**

By letter dated June 18, 2021 (Dkt. 31), counsel for defendants City of New York and CO Palmenteri (the “City Defendants”) has informed the Court that Plaintiff’s Article 730 Evaluation has been completed, and that Plaintiff has been “determined presently ‘fit to proceed’” (*id.*). The City Defendants accordingly request that the stay of this action (*see* Dkt. 27) be lifted, and that their motion to dismiss Plaintiff’s Complaint (pending at Dkt. 18) be considered “formally renew[ed]” (Dkt. 31). Under these circumstances, it is hereby ORDERED that:

1. The stay of proceedings in the above-captioned case is lifted.
2. As Plaintiff has reported to the Court that his legal papers were destroyed as the result of a fire (*see* Dkt. 30), the City Defendants are directed to serve Plaintiff forthwith with another copy of their pending motion to dismiss, with all supporting papers and exhibits (including the exhibited copy of Plaintiff’s Complaint), and to file proof of such service on the Docket of this action.
3. Plaintiff may have until July 23, 2021 to file an opposition to the City Defendants’ motion to dismiss his Complaint. As that motion is based on Plaintiff’s conceded

failure to exhaust his administrative remedies with respect to the alleged events of May 5, 2020, Plaintiff should focus his opposition on the specific reasons for that failure. Plaintiff is cautioned that, if he does not file an opposition by July 23, this Court will consider the City Defendants' motion based on their submissions alone.

4. The City Defendants may have until August 4, 2021 to file their reply, if any.

5. This Court notes that, in the same submission by which he informed the Court of the destruction of his legal papers (Dkt. 30), Plaintiff has also asked the Court to seek *pro bono* counsel to represent him in this case, as well as in other cases pending in this District. As to this case, Plaintiff's request is denied at this time, given that the City Defendants' motion to dismiss Plaintiff's Complaint is based on a narrow issue (lack of exhaustion), as to which the law is well established, and that Plaintiff should be able to explain to the Court the particular reasons why he apparently took no steps to exhaust the claim he raises in this case. This denial of Plaintiff's request for the Court to seek *pro bono* counsel for him in this case is without prejudice to renew, should Plaintiff's Complaint survive the pending motion to dismiss.

6. The Clerk of Court is directed to note on the Docket of this action that the previously imposed stay is lifted, and to mail a copy of this Order to Plaintiff, at the address reflected on the Docket and shown below.

Dated: New York, New York  
June 21, 2021

SO ORDERED



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DEBRA FREEMAN  
United States Magistrate Judge

Copies to:

Mr. Tyrone H. Massey  
B&C: 8952000522  
16-06 Hazen St.  
E. Elmhurst, NY 11370

Defendants' counsel (via ECF)